

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**Priscilla Sterling, Raine Becker, Shawn
Miller, and John Bennett, individually and on
behalf of all others similarly situated
Plaintiffs**

v.

Civil No. 3:22-cv-531-KHJ-MTP

**The City of Jackson, Mississippi; Chokwe A.
Lumumba; Tony Yarber; Kishia Powell;
Robert Miller; Jerriot Smash; Siemens
Corporation; Siemens Industry, Inc.; and
Trilogy Engineering Services LLC**

Defendants

**CHOKWE A. LUMUMBA, TONY YARBER, KISHA POWELL,
ROBERT MILLER, AND JERRIOT SMASH’S MOTION TO DISMISS
THE SECOND AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE
RELIEF AND MONEY DAMAGES AND/OR FOR QUALIFIED IMMUNITY**

Defendants Chokwe A. Lumumba, Tony Yarber, Kisha Powell, Robert Miller, and Jerriot Smash (the “Individual Defendants”), through counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), file this Motion to Dismiss the Second Amended Class Action Complaint for Injunctive Relief and Money Damages with Jury Trial Demand [101] against them.

In support of the requested relief, the Individual Defendants state:

1. In their Amended Complaint, Plaintiffs asserted three causes of action against the Individual Defendants for (1) violations of their bodily integrity; (2) state-created danger; and (3) common-law negligence. Am. Compl. [Doc. 57] at 77-81, 85-92.

2. On February 5, 2024, the Court dismissed with prejudice the bodily integrity and state-created danger claims against the Individual Defendants. *See* Order [Doc. 97] at 24-26.

3. Plaintiffs conceded they did not have a negligence claim against Individual Defendants, individually, and the Court dismissed that claim with prejudice, too. Mem. in Supp. [Doc. 89] at 2 n.1; Order [Doc. 97] at 26.

4. Hence, “the Court DISMISSE[D] with prejudice all claims against [the Individual Defendants]. Order [Doc. 97] at 26-27.

5. In its Order, the Court is clear that Plaintiffs may amend the Amended Complaint for the limited purposes of taking “another opportunity to plead their bodily integrity claim, focusing solely on the misrepresentation allegations.” Order [Doc. 97] at 21. *See also id.* at 27 (“The Court will allow Plaintiffs 14 days to replead their bodily integrity claim against the City of Jackson.”).

6. Nevertheless, Plaintiffs filed an amended pleading that went well beyond the scope of the amendment this Court allowed.

7. On February 20, 2024, Plaintiffs filed their Second Amended Complaint, asserting three identical claims against the Individual Defendants to those claims the Court previously dismissed with prejudice from the Amended Complaint for (1) violations of their bodily integrity; (2) state-created danger; and (3) common-law negligence. *Compare* 2d Am. Compl. [Doc. 101], at 80-85, 89-96, *with* Am. Compl. [Doc. 57], at 77-81, 85-92. The claims in the Second Amended Complaint also arise from the same operative facts as those claims the Court dismissed with prejudice. *Compare* 2d Am. Compl. [Doc. 101], at 12-76, *with* Am. Compl. [Doc. 57], at 11-72.

8. Plaintiffs cannot reassert the claims the Court dismissed with prejudice from the Amended Complaint in the Second Amended Complaint.

9. Accordingly, and for the reasons more fully set forth in their accompanying Memorandum in Support, the Individual Defendants request that the Court dismiss Counts I, II and V of the Second Amended Complaint against them.

RESPECTFULLY SUBMITTED, this the 14th day of March 2024.

/s/ Terris C. Harris
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ John Hawkins

JOHN HAWKINS